

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

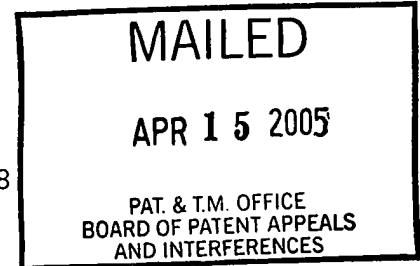
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HEINZ KERN

Appeal No. 2005-0559
Application No. 10/048,168

HEARD: APRIL 7, 2005



Before OWENS, KRATZ, and JEFFREY T. SMITH, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 2-6, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to a pyrotechnic primer. An understanding of the invention can be derived from a reading of exemplary claim 3, which is reproduced below.

3. Pyrotechnic primer for igniting propellant powder for sleeveless ammunition, the primer having an ignition element and a coil in which the energy required for triggering is transferred by electromagnetic means (inductively), characterised in that the ignition element

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and the coil are situated on a common, flat support material, the entire support material consisting of combustible or consumable materials, and in that a three-dimensional cylindrical coil is produced by providing conductive tracks on the support material, rolling the support material to form a cylinder, and laying opposed conductor ends of the coil one on top of the other and making a contact between them, with remaining ends of printed circuit traces forming connection surfaces of the ignition element.

The sole prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

| | | |
|----------------------|-----------|---------------|
| Brede et al. (Brede) | 4,651,254 | Mar. 17, 1987 |
|----------------------|-----------|---------------|

Claims 3 and 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Brede. Claims 2, 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brede.

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellant and the examiner concerning the issues before us on this appeal.

OPINION

Upon review of the entire record including the respective positions advanced by appellant and the examiner with respect to the rejections that remains before us, we find ourselves in agreement with appellant since the examiner has failed to carry the burden of establishing a prima facie case of anticipation or

obviousness. Accordingly, we will not sustain the examiner's stated rejections on this record substantially for reasons set forth in appellant's briefs.

Regarding the Section 102(b) rejection, the examiner has the initial burden of establishing a prima facie case of anticipation by pointing out where all of the claim limitations appear in a single reference. See In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1326-27, 231 USPQ 136, 138-39 (Fed. Cir. 1986). In order for a claimed invention to be anticipated under 35 U.S.C. § 102, all of the elements of the claim must be found in one reference. See Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Here, the examiner has not convincingly explained where Brede describes a structure which falls within the scope of the appealed claims 3 and 4. For example, concerning the appealed claims' requirement for an ignition element and a coil "situated on a common, flat support material" as recited in independent claim 3, the examiner refers to ignition element 41 of Brede as allegedly being supported along with a coil 3 on a common flat support. However, the examiner has not discharged the burden of explaining how element 41 as shown in figures 3 and 4 of Brede,

which is described as being an electrical connection associated with supporting element 8 (see, e.g., column 3, line 50 through column 4, line 8 of Brede), corresponds with appellant's claimed ignition element that is required to be situated on a common flat support material with a coil. In addition, the examiner's assertion that the "method of forming the device is not germane to the issue of patentability of the device itself" (answer, page 4) is legally incorrect. While a claimed device, which is at least in part described by the method by which it is made, may read on a device made by another method, the examiner must establish that substantially the same device, as claimed, would reasonably be expected to result from that other device preparation method. Here, the examiner has not discharged that initial burden by explaining how the compressed coil unit of Brede that is constructed by way of folding a support with multiple coils thereon that are separated by crease points, as illustrated in figures 1-3, would reasonably be expected to result in a product pyrotechnic primer corresponding with appellant's primer including a cylindrical coil and an ignition element formed by rolling a flat support material with conductive tracks thereon, as appellants claim.

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On this record, we reverse the stated Section 102(b) rejection. As for the Section 103(a) rejection of claims 2, 5 and 6, that rejection suffers from the same deficiency as discussed above with respect to the Section 102(b) rejection. Accordingly, we will not sustain the examiner's Section 103(a) rejection on this record.

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CONCLUSION


The decision of the examiner to reject claims 3 and 4 under 35 U.S.C. § 102(b) as being anticipated by Brede and to reject claims 2, 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Brede is reversed.

REVERSED

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge


PETER F. KRATZ
Administrative Patent Judge

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JEFFREY T. SMITH
Administrative Patent Judge

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